

## REMARKS

Reconsideration in view of the foregoing amendments and the following remarks is respectfully requested. Moreover, the applicant has reviewed the Final Office Action of September 5, 2007, and submits that this paper is responsive to all points raised therein.

### I. Status of the Claims

Claims 1, 2 and 5-39 are pending in the instant Patent Application. Claims 1, 21, 24, 27, 30, 34-36 and 38 have been amended. Support for these amendments is, for example, in drawing Figs. 1-3. The amendments are discussed below. Claims 3 and 4 were cancelled previously.

### II. Rejections Under 35 USC 102(b)

Claims 1-11, 16, 19-22, 24, 25 and 33-39 were rejected under 35 USC 102(b) as anticipated by Clary (U.S. Patent No. 3,271,787) (Clary '787).

Claims 1, 21 and 24 have been further amended to recite a tile cap configured for fitting over an existing tile surface. This is in addition to the recitations of oppositely disposed first and second surfaces with at least one edge formed of the second surface converging toward the first surface, this edge configured for conforming with a corresponding edge of an existing tile of the existing tile surface, and an adhesive in communication with the second surface.

Claims 34-36 and 38 have been amended to recite a tile cap configured for fitting over an existing tile surface.

Clary '787 is directed to swimming pool coping blocks that are attached to rough concrete pool decking. These coping blocks are not configured for fitting over the surface of an existing tile. With additional respect to claims 1, 21 and 24, the coping blocks of Clary '787 do not include any edges for conforming with any edges of existing tile. Accordingly, these coping blocks do not cap tile in any form, like the claimed subject matter.

For the reasons above, Clary '787 fails to show, teach or suggest any structure or methods like those recited in claims 1, 21, 24, 34-36 and 38. Accordingly, claims 1, 21, 24, 34-36 and 38 are not anticipated by Clary '787 under 35 USC 102(b).

Since claims 1, 21, 24, 36 and 38 are not anticipated by Clary '787 under 35 USC 102(b), claims 2-11, 16, 19 and 20, 22, 25 and 33, 37 and 39, respectively dependent thereon, are also

not anticipated by Clary '787 for the same reasons. These claims further distinguish over the cited art.

### **III. Rejections Under 35 USC 103(a)**

Claims 12-15, 23 and 26 were rejected under 35 USC 103(a) as unpatentable over Clary '787 in view of Zinbarg (U.S. Patent No. 5,946,869) (Zinbarg '869).

These claims are all dependent on claims 1, 21 and 24, which as further amended, have been discussed above. That discussion is applicable here.

Clary '787 has been discussed above. That discussion is also applicable here.

As discussed above, Clary '787 fails to meet all of the limitations of independent claims 1, 21 and 24.

Zinbarg '869, cited to teach double sided form tape adhesives and other adhesives, fails to cure the deficiencies of Clary '787.

Accordingly, Clary '787 in combination with Zinbarg '869 remains structurally deficient and fails to meet the recitations of claims 1, 21 and 24. As such, this combination of references fails to render claims 1, 21 and 24 obvious under 35 USC 103(a).

Since claims 1, 21 and 24 are nonobvious over Clary '787 in view Zinbarg '869, claims 12-15, 23 and 26, respectively dependent thereon, are also allowable over this cited art for the same reasons. These claims further distinguish over this cited art.

Claims 17, 18, 27, 30 were rejected under 35 USC 103(a) as unpatentable over Clary '787 in view of Stoneburner (U.S. Patent 3,359,574) (Stoneburner '574).

Claims 17 and 18 are dependent on claim 1. This claim has been discussed above and that discussion is applicable here.

Claims 27 and 30 are method claims, amended similarly to claim 1, to recite a tile cap configured for fitting over the surface of an existing tile.

Clary '787 has been discussed above. That discussion is also applicable here.

As discussed above, Clary '787 discloses coping blocks, that are not configured for fitting over the surface of an existing tile. Accordingly, Clary' 787 fails to meet all of the limitations of independent claims 1, 27 and 30.

Stoneburner '574, cited to teach bactericidal materials, fails to cure the deficiencies of Clary '787.

Accordingly, Clary '787 in combination with Stoneburner '574 remains structurally deficient and fails to meet the recitations of claims 1, 27 and 30. As such, this combination of references fails to render claims 1, 27 and 30 obvious under 35 USC 103(a).

Since claim 1 is nonobvious over Clary '787 in view Stoneburner '574, claims 17 and 18, dependent thereon, are also allowable over this cited art for the same reasons. These claims further distinguish over this cited art.

Claims 28, 29, 31 and 32 were rejected under 35 USC 103(a) as unpatentable over Clary '787 in view of Stoneburner '574 and Zinbarg '869.

Claims 28 and 29 are dependent on claim 27, while claims 31 and 32 are dependent on claim 30. both claim 27 and claim 20 have been discussed above. Those discussions are applicable here.

Clary '787, Stoneburner '574 and Zinbarg '869 have been discussed above. Those discussions are applicable here.

As discussed above, both Stoneburner '574 and Zinbarg '869 fail to cure the deficiencies associated with Clary '787, as neither of these references disclose methods for capping tile. Accordingly, this combination falls short of claims 27 and 30, and does not render these claims obvious under 35 USC 103(a).

Since claims 27 and 30 are nonobvious over Clary '787 in view Stoneburner '574 and Zinbarg '869, claims 28 and 29, and 31 and 32, respectively dependent thereon, are also allowable over this cited art for the same reasons. These claims further distinguish over this cited art.

#### **IV. Conclusion**

The applicant also notes the Examiner's citation of Jardim (U.S. Patent No. 5,678,254) to complete the record.

Should the Examiner have any question or comment as to the form, content or entry of this paper, the Examiner is requested to contact the undersigned at the telephone number below.

Similarly, if there are any further issues yet to be resolved to advance the prosecution of this application to issue, the Examiner is requested to telephone the undersigned counsel.

Entry of this paper and allowance of all pending claims, 1, 2 and 5-39, is respectfully requested.

The applicant believes no further fees are currently due other than a fee for a Petition for a one-month Extension of Time. However, if any fee is deemed necessary in connection with this Response, please charge Deposit Account No. 12-0600.

Respectfully submitted,  
LATHROP & GAGE L.C.

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By



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